

12 FAREED SEPEHRY-FARD,

13 Plaintiff,

14 v.

15 SELECT PORTFOLIO SERVICING, INC.,
et al.,

16 Defendants.

17 Case No. 14-CV-05142-LHK

18 **ORDER GRANTING DEFENDANTS'**
MOTION FOR CONTEMPT; DENYING
PLAINTIFF'S MOTION FOR RELIEF
FROM JUDGMENT, PLAINTIFF'S
MOTION TO STRIKE, PLAINTIFF'S
MOTION TO RECUSE, AND
PLAINTIFF'S MOTION FOR THE
COURT TO CONFIRM JURSIDICTION

19 Re: Dkt. No. 61, 65, 66, 67, 75

20 On March 10, 2015, this Court declared Plaintiff Fareed Sepehry-Fard ("Plaintiff") a
21 vexatious litigant and imposed a pre-filing review requirement on Plaintiff for any action brought
22 regarding the foreclosure of the property located at 18314 Baylor Avenue, Saratoga, California
23 95070. *Sepehry-Fard v. Select Portfolio Servicing, Inc.*, 2015 WL 1063070 (N.D. Cal. Mar. 10,
24 2015), ECF No. 58 ("Vexatious Litigant Order"). The Court also dismissed Plaintiff's claims with
25 prejudice and denied Plaintiff's motion to recuse the undersigned. *Id.* The Clerk then closed the
case file.

26 Defendants Countrywide Home Loans, Inc. ("Countrywide") and Recontrust Company,

1 N.A. (“Recontrust”) now move to hold Plaintiff in contempt for violating the Vexatious Litigant
2 Order. ECF No. 61. In response, Plaintiff has filed four motions: (1) a motion for relief from
3 judgment pursuant to Federal Rule of Civil Procedure 60; (2) a motion to strike the motion for
4 contempt; (3) a motion to recuse; and (4) a motion for the Court to “confirm jurisdiction and to
5 confirm jurisdiction over alleged defendants.” ECF Nos. 65, 66, 67, 75. Having considered the
6 parties’ briefing, the relevant law, and the record in this case, the Court hereby GRANTS
7 Countrywide’s and Recontrust’s motion for contempt, and DENIES Plaintiff’s four motions.

8 **I. BACKGROUND**

9 **A. Factual Background**

10 A full recitation of the facts of this case and Plaintiff’s litigation history is set out in the
11 Vexatious Litigant Order. Therefore, the facts and procedural history are recounted here only to
12 the extent necessary.

13 In September 2005, Plaintiff refinanced the real property at 18314 Baylor Avenue,
14 Saratoga, California 95070 (the “Property”) with two mortgage loans (the “Notes”). *See*
15 Vexatious Litigant Order at 2. The deeds of trusts recorded on September 26, 2005 identify
16 Countrywide as the “lender,” Recontrust as the “Trustee,” and Mortgage Electronic Registration
17 Systems, Inc. (“MERS”) as the “beneficiary.” *Id.* Thereafter, MERS recorded assignments
18 whereby The Bank of New York Mellon fka The Bank of New York, as Trustee for the
19 Certificateholders CWALT, Inc. Alternative Loan Trust 2005-62 Mortgage Pass-Through
20 Certificates, Series 2005-62 (“BONY”) became the beneficiary of the Notes. *Id.* at 3.

21 Eventually, Plaintiff paid off one loan, and a full reconveyance was recorded on September
22 25, 2012. *Id.* Plaintiff, however, fell behind on repaying the other loan. *Id.* As a result, a notice
23 of default was recorded on February 18, 2010. That notice was rescinded on July 22, 2010. *Id.* It
24 appears that no foreclosure ever took place, and Plaintiff is preparing to close on a sale of the
25 Property. *See* ECF No. 76, Countrywide’s and Recontrust’s Supplemental Declaration (“Defs.
26 Supp. Decl.”), Ex. E.

1 **B. The Instant Litigation**

2 On November 20, 2014, Plaintiff, proceeding pro se, filed this case against Countrywide
3 and Recontrust, in addition to Defendants Select Portfolio Servicing, Inc. (“SPS”), MERS, and
4 BONY (collectively, “Defendants”). ECF No. 1. The gravamen of Plaintiff’s 122-page complaint
5 (over 600 pages including exhibits), liberally construed, is that Defendants illegally threatened to
6 foreclose on the Property.

7 This case constituted Plaintiff’s eighth foreclosure-related lawsuit and Plaintiff’s fourth
8 attempt to stop foreclosure on the Property. *See Sepehry-Fard v. Select Portfolio Servicing, Inc. et*
9 *al.*, No. 14-CV-05142-LHK (N.D. Cal.); *Sepehry-Fard v. Nationstar Mortg. LLC et al.*, No. 14-
10 CV-03218-LHK (N.D. Cal.); *Sepehry-Fard v. Countrywide Home Loans, Inc. et al.*, No. 13-CV-
11 05769-BLF (N.D. Cal.); *Sepehry-Fard v. GreenPoint Mortg. Funding, Inc. et al.*, No. 13-CV-
12 04535-EJD (N.D. Cal.); *Sepehry-Fard v. Bank of N.Y. Mellon et al.*, No. 12-CV-01260-LHK
13 (N.D. Cal.); *Sepehry-Fard v. Aurora Bank FSB et al.*, No. 12-CV-0871-EJD (N.D. Cal.); *Sepehry-*
14 *Fard v. Bank of N.Y. Mellon et al.*, No. 1-11-CV-210028 (Cal. Super. Ct.); *Sepehry-Fard v.*
15 *Aurora Bank FSB et al.*, No. 1-11-CV-209804 (Cal. Super. Ct.).¹ Plaintiff’s four other
16 foreclosure-related lawsuits involve Plaintiff’s other property located at 12309 Saratoga Creek
17 Drive, Saratoga, California 95070. Plaintiff’s lawsuits surrounding that property raise claims and
18 theories of liability virtually identical to those that Plaintiff has raised with respect to the Property.
19 Plaintiff has not prevailed in any of these eight lawsuits.

20 In the instant case, the Court granted Defendants’ motion to dismiss with prejudice on
21 March 10, 2015. *See* Vexatious Litigant Order at 7–10. The Court concluded that Plaintiff’s
22 claims were barred by res judicata because Plaintiff could have—and did—bring claims in his
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¹ In addition to these eight, Plaintiff has filed three other federal lawsuits in this district: *Sepehry-*
25 *Fard v. Oregon*, No. 14-CV-02444-EJD (N.D. Cal.) (suit to void a criminal conviction); *Sepehry-*
26 *Fard v. Dep’t Stores Nat’l Bank et al.*, No. 13-CV-03131-WHO (N.D. Cal.) (suit against debt
collectors); *Sepehry-Fard v. Mercedes-Benz Fin. Servs.*, No. 13-CV-02784-BLF (N.D. Cal.) (suit
against collector on automobile loan).

1 prior federal lawsuits based on the same allegations regarding the alleged illegal foreclosure of the
2 Property. *Id.*

3 In the same order, the Court denied a motion by Plaintiff to recuse the undersigned. The
4 Court noted that the Court “has gone to great lengths to ensure that Plaintiff, as a pro se litigant,
5 has been afforded due process. The Court has liberally construed Plaintiff’s complaints, referred
6 him to self-help legal services, and granted him leave to amend where appropriate.” *Id.* at 11. The
7 Court concluded that “Plaintiff provides no basis for a reasonable observer to find that the
8 undersigned has displayed any bias or prejudice stemming from an extrajudicial source.” *Id.*

9 Lastly, the Court declared Plaintiff a vexatious litigant. First, the Court explained that
10 Plaintiff was on notice that he may be declared a vexatious litigant and was able to oppose the
11 declaration. *Id.* at 13. Second, the Court exhaustively detailed Plaintiff’s eight foreclosure-related
12 lawsuits regarding Plaintiff’s two properties, and concluded that all eight have all been “patently
13 without merit.” *Id.* at 3–5, 14–16. Third, in light of Plaintiff’s history of filing meritless lawsuits
14 and the “plethora of frivolous motions” filed in those lawsuits, the Court found that Plaintiff’s
15 litigation against Defendants has been frivolous and harassing. *Id.* at 16–18. The Court further
16 determined that Plaintiff “without question” has “caused unnecessary expense to his opposing
17 parties and has posed an unnecessary burden on the courts.” *Id.* at 18 (alterations omitted).
18 Finally, the Court found that “Plaintiff’s erratic, hostile behavior towards Defendants only
19 exacerbates the prejudice they have endured.” *Id.*

20 Given “Plaintiff’s history of rule-breaking, increasingly hostile behavior, and relentless
21 filing of frivolous lawsuits and motions,” the Court concluded that a narrowly tailored pre-filing
22 requirement should be imposed on Plaintiff. *Id.* at *11. Accordingly, the Court ordered:

23 Fareed Sepehry-Fard must obtain leave before filing any action in the United States
24 District Court for the Northern District of California related to the foreclosure on
25 his property located at 18314 Baylor Avenue, Saratoga, California 95070. The
26 Clerk shall forward any such complaint submitted by Plaintiff to the general duty
judge for pre-filing review. This order extends to actions originally brought in state
court and removed to this district, and to adversary proceedings in this district’s
bankruptcy court. Any violation of this order will expose Plaintiff to a contempt

1 hearing and appropriate sanctions, and any action filed in violation of this order
2 will be subject to dismissal.

3 *Id.* at *12.

4 Plaintiff did not appeal the Court's dismissal of Plaintiff's claims or the Court's declaration
5 that Plaintiff is a vexatious litigant.

6 **C. Alleged Violations of the Vexatious Litigant Order**

7 Since the dismissal of the instant action, and apparently undeterred by the Vexatious
8 Litigant Order, Plaintiff has filed numerous actions and motions related to the Property.
9 Countrywide and Recontrust specifically highlight four actions against them, described below.

10 **a. Plaintiff's Adversary Proceeding**

11 On May 6, 2015, Plaintiff filed *Sepehry-Fard v. Select Portfolio Servicing, Inc.*, No. 15-
12 05048 (Bankr. N.D. Cal. 2015), an adversary proceeding against SPS in the U.S. Bankruptcy
13 Court for the Northern District of California. ECF No. 62, Countrywide's and Recontrust's
14 Request for Judicial Notice ("Defs. RJN"), Ex. 1. On May 11, 2015, Plaintiff amended the
15 complaint to name Countrywide and Recontrust as defendants. *Id.* Ex. 2. The adversary
16 proceeding revolves around the validity of Countrywide's loan against the Property.

17 On August 5, 2015, the Bankruptcy Court dismissed the adversary proceeding because, in
18 part, "it appears that [Plaintiff] violated the district court's vexatious litigant order by initiating
19 this adversary case." *Id.* Ex. 3. Undeterred, Plaintiff filed a motion for reconsideration, which the
20 Bankruptcy Court denied on November 4, 2015. *Id.* Ex. 4. In the November 4, 2015 order, the
21 Bankruptcy Court again noted that Plaintiff "did not assert that he had complied with [the
22 Vexatious Litigant Order's] prefiling requirement." *Id.* Still undeterred, on November 10, 2015,
23 Plaintiff appealed the Bankruptcy Court's order of dismissal. *Id.* Ex. 5. The U.S. Bankruptcy
24 Appellate Panel of the Ninth Circuit dismissed Plaintiff's appeal on July 29, 2016 because
25 Plaintiff failed to pay the filing fees. Defs. Supp. Decl. Ex. B.

26 **b. Plaintiff's Motion to Set Aside the Judgment in *Sepehry-Fard II***

27 On February 19, 2016, Plaintiff moved to reopen and set aside the judgment in the federal
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1 case *Sepehry-Fard v. Countrywide Home Loans, Inc.* ("Sepehry-Fard II"), No. 13-CV-05769-
2 BLF (N.D. Cal). Defs. RJN Ex. 8. That case, which sought to quiet title to the Property, had been
3 dismissed by U.S. District Court Judge Beth Labson Freeman for lack of subject matter
4 jurisdiction almost two years prior, on June 13, 2014. *Id.* Ex. 7. In the motion to set aside the
5 judgment, Plaintiff argued that the loan against the Property is void and Plaintiff owes no loans.
6 In addition, on February 26, 2016, Plaintiff moved ex parte for a temporary injunction and
7 restraining order barring the sale of the Property. No. 13-CV-05769, ECF No. 79.

8 Judge Freeman denied Plaintiff's motion for a temporary restraining order on March 4,
9 2016, and denied Plaintiff's motion to reopen the case and set aside the judgment on March 21,
10 2016. Defs. RJN Exs. 10, 11. On March 28, 2016, Plaintiff appealed Judge Freeman's orders to
11 the Ninth Circuit. *Id.* Ex. 12. On June 9, 2016, the Ninth Circuit denied Plaintiff's application to
12 appeal in forma pauperis because "the appeal is frivolous." Defs. Supp. Decl. Ex. C. On July 7,
13 2016, the Ninth Circuit dismissed the appeal because Plaintiff failed to pay the filing fees. *Id.* Ex.
14 D. On August 1, 2016, the Ninth Circuit denied four motions filed by Plaintiff on the grounds that
15 the appeal had been dismissed, and Plaintiff had failed to pay the filing fees. No. 13-CV-05769,
16 ECF No. 104. The Ninth Circuit ordered that "[n]o further filings will be entertained in this closed
17 case." *Id.*

18 **c. Motions in Plaintiff's Bankruptcy Proceeding**

19 Plaintiff has attempted to litigate issues related to the Property in Plaintiff's bankruptcy
20 proceeding, *In re Sepehry-Fard*, No. 16-50582 (Bankr. N.D. Cal. 2016). Specifically, on March
21 25, 2016, Plaintiff filed an ex parte motion in the bankruptcy case to compel SPS to modify
22 Plaintiff's debt on the Property. Defs. RJN Ex. 14. On March 28, 2016, the Bankruptcy Court
23 declined Plaintiff's motion to shorten time on the motion to compel because "it finds no basis to
24 grant the relief requested" in the motion to compel. *Id.* Ex. 15. The next day, Plaintiff moved for
25 reconsideration, *id.* Ex. 16, which the Bankruptcy Court denied on April 29, 2016, *id.* Ex. 17. At
26 some point during the bankruptcy proceeding, Plaintiff also subpoenaed Countrywide and

1 Recontrust.

2 On May 12, 2016, Plaintiff appealed all Bankruptcy Court orders against him. *Id.* Ex. 18.
3 On August 1, 2016, Plaintiff moved to dismiss all appeals. Defs. Supp. Decl. Ex. E. Pursuant to
4 Plaintiff's request, the Bankruptcy Appellate Panel dismissed Plaintiff's appeals. *Id.* Ex. F.

5 **d. Plaintiff's New Federal Complaint**

6 On May 18, 2016, Plaintiff filed a complaint in federal district court related to the
7 Property. *See Sepehry-Fard v. Select Portfolio Servicing, Inc.*, No. 16-MC-80112-EJD (N.D.
8 Cal.). On May 23, 2016, U.S. District Judge Edward Davila reviewed the complaint pursuant to
9 the pre-filing review requirement in the Vexatious Litigant Order. Defs. Supp. Decl. Ex. G.
10 Judge Davila found that the complaint was "related to the foreclosure of the Baylor Avenue
11 Property," as well as "duplicative of prior litigation instituted by Plaintiff and frivolous." *Id.*
12 Accordingly, Judge Davila denied Plaintiff leave to file the complaint. *Id.*

13 On June 14, 2016, Judge Davila denied Plaintiff's "Administrative Motion to Vacate Void
14 Order." No. 16-MC-80112, ECF No. 6. Judge Davila also denied Plaintiff's motion to recuse. *Id.*
15 On June 22, 2016, Plaintiff appealed Judge Davila's June 14, 2016 order. No. 16-MC-80112, ECF
16 No. 8. The appeal remains pending before the Ninth Circuit.

17 **D. The Instant Motions**

18 On May 18, 2016, Countrywide and Recontrust moved to hold Plaintiff in contempt for
19 violation of the Vexatious Litigant Order, ECF No. 61, and filed a request for judicial notice, ECF
20 No. 62. Rather than substantively oppose the motion for contempt, Plaintiff moved to strike the
21 motion on June 1, 2016. ECF No. 66. That same day, Plaintiff filed a motion for relief from
22 judgment under Federal Rule of Civil Procedure 60, ECF No. 65, as well as a motion to recuse the
23 undersigned for bias, ECF No. 67. Plaintiff filed a request for judicial notice in support of the
24 three motions. ECF No. 68.

25 On June 15, 2016, Countrywide and Recontrust opposed Plaintiff's three motions in an

1 omnibus opposition.² ECF No. 71. MERS, SPS, and BONY joined the omnibus opposition on
2 June 20, 2016. ECF No. 73. Plaintiff replied on June 22, 2016. ECF No. 74.

3 On June 24, 2016, Plaintiff filed an administrative motion to “confirm jurisdiction and to
4 confirm jurisdiction over alleged defendants.” ECF No. 75. On August 5, 2016, Plaintiff filed a
5 “Notice of Judicial Corruption Reported to Senate Judicial Committee” alleging misconduct by
6 Ninth Circuit Court of Appeal Judges Richard Clifton and Paul Watford in a different case. ECF
7 No. 77. Also on August 5, 2016, Countrywide and Recontrust filed a supplemental declaration
8 with an update on the status of Plaintiff’s various lawsuits. ECF No. 76.

9 **II. JUDICIAL NOTICE**

10 As a preliminary matter, the Court addresses the parties’ requests for judicial notice.
11 Under Federal Rule of Evidence 201(b), the Court may take judicial notice of any fact that is “not
12 subject to reasonable dispute because it . . . can be accurately and readily determined from sources
13 whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Proper subjects of
14 judicial notice include “court filings and other matters of public record.” *Reyn’s Pasta Bella, LLC*
15 v. *Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006).

16 Plaintiff requests judicial notice of the following documents: (1) a subpoena issued to the
17 undersigned by the Bankruptcy Court; (2) affidavits by Plaintiff and three additional people
18 alleging that the undersigned and Judge Davila are biased against Plaintiff; (3) a filing in
19 Plaintiff’s bankruptcy proceeding; (4) loan documents related to the Property, including the Notes
20 and Plaintiff’s payment history; (5) the docket in another case filed by Plaintiff; (6) court orders;
21 and (7) Plaintiff’s “land patent as Quito Rancho.” ECF No. 68. The Court DENIES judicial
22 notice of the four affidavits, as the facts within can not be “accurately and readily determined from

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24 ² On June 22, 2016, Plaintiff moved to strike the opposition. ECF No. 74. Plaintiff argues that the
25 opposition violates Civil Local Rule 7-5 because it is not accompanied by a declaration supporting
26 the factual contentions therein. However, Plaintiff fails to identify what factual contentions he
challenges. Moreover, the factual contentions in the opposition come from the record in this case
or the judicially noticeable record. Thus, the opposition does not violate Civil Local Rule 7-5 and
Plaintiff’s motion to strike is DENIED.

1 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b); *see also City of*
2 *Royal Oak Ret. Sys. v. Juniper Networks, Inc.*, 880 F. Supp. 2d 1045, 1060 (N.D. Cal. 2012)
3 (finding a declaration was not subject to judicial notice). The Court also DENIES judicial notice
4 of the documents related to “Quito Rancho,” as it is not clear from where these documents came,
5 and certain pages of the documents are not legible. However, the Court GRANTS Plaintiff’s
6 request for judicial notice in all other respects, as the other documents are matters of public record.

7 Countrywide and Recontrust request judicial notice of (1) complaints, motions, and notices
8 of appeal filed by Plaintiff; and (2) court orders and dockets in other cases filed by Plaintiff. *See*
9 *Defs. RJN*. Plaintiff does not oppose this request, and the Court finds these documents subject to
10 judicial notice. *See Reyn’s Pasta Bella*, 442 F.3d at 746 n.6 (holding that “court filings and other
11 matters of public record” are subject to judicial notice). Accordingly, the Court GRANTS
12 Countrywide’s and Recontrust’s request for judicial notice.

13 In addition, the Court takes judicial notice of Exhibits A–G attached to Countrywide’s and
14 Recontrust’s supplemental declaration filed on August 5, 2016. *See* *Defs. Supp. Decl.* These
15 exhibits are recent court orders filed in Plaintiff’s other cases, as well as a motion filed by Plaintiff
16 with the Bankruptcy Appellate Panel. These exhibits are the proper subject of judicial notice. *See*
17 *Reyn’s Pasta Bella*, 442 F.3d at 746 n.6.

18 III. DISCUSSION

19 The Court first examines Plaintiff’s motion for relief from judgment. The Court then
20 considers Countrywide’s and Recontrust’s motion for contempt; Plaintiff’s motion to recuse; and
21 lastly Plaintiff’s motion to “confirm jurisdiction and to confirm jurisdiction over alleged
22 defendants.”

23 **A. Plaintiff’s Motion for Relief from Judgment**

24 Plaintiff moves pursuant to Federal Rule of Civil Procedure 60(b) for relief from the
25 Court’s Vexatious Litigant Order. ECF No. 65. Under Rule 60(b), the Court may grant a motion
26 for relief from judgment only upon a showing of (1) mistake, inadvertence, surprise, or excusable
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neglect; (2) newly discovered evidence which by due diligence could not have been discovered before the court's decision; (3) fraud by the adverse party; (4) the judgment is void; (5) the judgment has been satisfied; or (6) any other reason justifying relief. Fed. R. Civ. P. 60(b); *Sch. Dist. 1J v. ACandS Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). “[M]ere disagreement with a court’s order does not provide a basis for reconsideration.” *Durkee v. Ford Motor Co.*, 2015 WL 1156765, at *2 (N.D. Cal. Mar. 13, 2015) (citing *McDowell v. Calderon*, 197 F.3d 1253, 1256 (9th Cir. 1999)). Motions pursuant to Rule 60(b) “must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.” Fed. R. Civ. P. 60(c)(1).

Plaintiff moves for relief from judgment pursuant to subsections (1), (4), (5), and (6). ECF No. 65, at 8. However, because Plaintiff's motion was filed on June 1, 2016—more than a year after the March 10, 2015 Vexatious Litigant Order—Plaintiff may not seek relief under subsection (1). *See* Fed. R. Civ. P. 60(c)(1). Regardless, however, relief is not warranted under any subsection. Plaintiff does not show mistake, inadvertence, surprise, excusable neglect, satisfaction of the judgment, or voiding of the judgment. Nor does Plaintiff offer any new evidence or relevant legal authority that could not have been discovered with due diligence. Lastly, Plaintiff fails to present any other reason justifying relief, such as extraordinary circumstances. *See Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005) (noting that “extraordinary circumstances” justify reopening a final judgment under Rule 60(b)(6)). Indeed, Plaintiff does not challenge the Vexatious Litigant Order’s conclusion that Plaintiff’s claims are barred by res judicata, or the Vexatious Litigant Order’s finding that Plaintiff has repeatedly filed harassing, frivolous lawsuits related to the Property. Accordingly, the Court DENIES Plaintiff’s motion for relief from judgment.

B. Countrywide's and Recontrust's Motion for Contempt

1. Plaintiff's Motion to Strike Countrywide's and Recontrust's Motion for Contempt

1 Plaintiff moves to strike Countrywide's and Recontrust's motion for contempt pursuant to
2 Federal Rule of Civil Procedure 12(f). ECF No. 66. Rule 12(f) provides that the Court "may
3 strike from *a pleading* an insufficient defense or any redundant, immaterial, impertinent, or
4 scandalous matter." Fed. R. Civ. P. 12(f) (emphasis added). The motion for contempt is not a
5 pleading. *See* Fed. R. Civ. P. 7(a) (defining pleadings). Thus, Rule 12(f)—which applies only to
6 "pleadings"—does not provide a basis for the Court to strike the motion for contempt. *See Sidney-*
7 *Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983) ("Under the express language of
8 [Rule 12(f)], only pleadings are subject to motions to strike.").

9 Moreover, although the Court has inherent power to strike filings, the Court sees no reason
10 to strike the motion for contempt. *See Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404
11 (9th Cir. 2010) (noting district courts have inherent power to strike a party's filings).
12 Countrywide's and Recontrust's motion for contempt was filed in compliance with the Court's
13 Civil Local Rules. Plaintiff offers no reason why the motion should not be adjudicated on the
14 merits. Accordingly, the Court DENIES Plaintiff's motion to strike the motion for contempt.

15 **2. Merits of Countrywide's and Recontrust's Motion for Contempt**

16 Next, the Court considers Countrywide's and Recontrust's motion to hold Plaintiff in civil
17 contempt for violating the Vexatious Litigant Order. ECF No. 61.

18 A district court has the inherent authority to enforce compliance with its orders through a
19 civil contempt proceeding. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821,
20 827–28 (1994). Civil contempt consists of a party's disobedience to "a specific and definite court
21 order by failure to take all reasonable steps within the party's power to comply." *Reno Air Racing*
22 *Ass'n v. McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006). The contempt "need not be willful;
23 however, a person should not be held in contempt if his action appears to be based on a good faith
24 and reasonable interpretation of the court's order." *Id.* (internal citations and quotation marks
25 omitted). Substantial compliance also is a defense to civil contempt—"if a violating party has
26 taken all reasonable steps to comply with the court order, technical or inadvertent violations of the

1 order will not support a finding of civil contempt.” *Gen. Signal Corp. v. Donallco, Inc.*, 787 F.2d
2 1376, 1379 (9th Cir. 1986) (internal quotation marks and citation omitted). Thus, the party
3 alleging civil contempt must demonstrate by clear and convincing evidence that (1) the contemnor
4 violated a court order, (2) the noncompliance was more than technical or de minimis, and (3) the
5 contemnor’s conduct was not the product of a good faith or reasonable interpretation of the
6 violated order. *See United States v. Bright*, 596 F.3d 683, 694 (9th Cir. 2010); *Inst. of Cetacean*
7 *Research v. Sea Shepherd Conservation Society*, 774 F.3d 935, 945 (9th Cir. 2014).

8 Here, Countrywide and Recontrust assert that Plaintiff has violated the Vexatious Litigant
9 Order on multiple occasions. Plaintiff does not dispute that Plaintiff violated the Court’s order,
10 but argues that the order is void. ECF No. 66. Among other reasons, Plaintiff contends that the
11 Property is “within the boundary of a Spanish or Mexican land grant” and the Property can not be
12 foreclosed upon unless the Court “continue[s] to declare war on REPUBLIC OF MEXICO,
13 without any jurisdiction, whatsoever.” *Id.* at 13. The Court finds that Plaintiff has violated the
14 Court’s Vexatious Litigant Order twice and that sanctions are warranted, as explained below.

15 First, Plaintiff’s May 6, 2016 adversary proceeding clearly violates the Vexatious Litigant
16 Order. The order requires Plaintiff to “obtain leave before filing any action in the United States
17 District Court for the Northern District of California related to the foreclosure on [the Property]”
18 and specifically “extends to . . . adversary proceedings in this district’s bankruptcy court.” *See*
19 Vexatious Litigant Order at 21. In contravention of the Vexatious Litigant Order, on May 6, 2016,
20 Plaintiff filed an adversary proceeding regarding the foreclosure of the Property without seeking
21 pre-filing review. Defs. RJN Ex. 1. Indeed, the Bankruptcy Court dismissed Plaintiff’s adversary
22 proceeding based, in part, on its finding that “it appears that [Plaintiff] violated the district court’s
23 vexatious litigant order by initiating this adversary case.” *See id.* Ex. 3. The Bankruptcy Court
24 later denied Plaintiff’s motion for reconsideration, and again noted that Plaintiff “did not assert
25 that he had complied with [the Vexatious Litigant Order’s] prefiling requirement.” *Id.* Ex. 4.

26 Although the Bankruptcy Court twice informed Plaintiff that the adversary proceeding was
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1 in violation of this Court’s Vexatious Litigant Order, Plaintiff continued to pursue the proceeding
2 by filing an appeal. *See id.* Exs. 3, 4 (Bankruptcy Court orders informing Plaintiff that the
3 adversary proceeding violates the vexatious litigant order); *id.* Ex. 5 (Plaintiff’s notice of appeal).
4 In light of the Bankruptcy Court’s repeated admonitions that Plaintiff was in violation of the
5 Vexatious Litigant Order, the Court finds that Plaintiff’s disregard of the Vexatious Litigant Order
6 is willful and blatant.

7 As to the second violation of the Vexatious Litigant Order, on May 18, 2016, Plaintiff
8 attempted to file a complaint in federal district court related to the Property. Judge Davila found
9 that the complaint was barred by the Vexatious Litigant Order because the complaint was “both
10 duplicative of prior litigation instituted by Plaintiff and frivolous.” Defs. Supp. Decl. Ex. G.
11 Upon Judge Davila’s denial of Plaintiff’s motion for reconsideration, Plaintiff appealed. No. 16-
12 MC-80112, ECF No. 8. Thus, similar to Plaintiff’s adversary proceeding, Plaintiff continued to
13 pursue the litigation even after being expressly informed that Plaintiff was in violation of the
14 Vexatious Litigant Order. Plaintiff’s persistent and willful violations of the Vexatious Litigant
15 Order continue Plaintiff’s pattern of “repeatedly flout[ing] the rules” that this Court found in the
16 Vexatious Litigant Order. *See* Vexatious Litigant Order at 20 (describing Plaintiff’s “history of
17 rule-breaking”).

18 Countrywide and Recontrust contend that Plaintiff violated the Vexatious Litigant Order in
19 two additional cases. They first cite Plaintiff’s February 19, 2016 attempt to set aside the nearly
20 two-year-old judgment in *Sepehry-Fard II*. However, filing a motion to set aside judgment does
21 not fall within the plain language of the Vexatious Litigant Order, which specifically imposes a
22 pre-filing review requirement on Plaintiff for new “action[s]” and “complaint[s]” arising out of the
23 foreclosure of the Property. Vexatious Litigant Order at 21. Plaintiff’s motion to set aside the
24 *Sepehry-Fard II* judgment is neither a new action nor a complaint and thus does not fall within the
25 Vexatious Litigant Order. *See Inst. of Cetacean Research*, 774 F.3d at 945 (stating that contempt
26 consists of disobedience to a “specific and definite court order”). Nonetheless, the Court cautions

1 Plaintiff that another motion to set aside the judgment in any of the closed cases regarding the
2 foreclosure of the Property may result in the expansion of the Vexatious Litigant Order to require
3 pre-filing review of such motions.

4 Next, Countrywide and Recontrust contend that Plaintiff violated the Vexatious Litigant
5 Order by filing motions in Plaintiff's bankruptcy proceeding. ECF No. 61, at 8. However,
6 Countrywide and Recontrust offer no evidence that they were harmed by any motion filed in
7 Plaintiff's bankruptcy proceeding. Countrywide and Recontrust specifically describe only one
8 motion filed by Plaintiff in the bankruptcy proceeding. Defs. RJN Ex. 14. This motion was filed
9 against SPS, not Countrywide or Recontrust, and there is no indication that Countrywide or
10 Recontrust responded to the motion. *See id.* Further, although Countrywide and Recontrust state
11 that they were forced to file a motion to quash a subpoena filed by Plaintiff, Countrywide and
12 Recontrust do not describe the subpoena, the subpoena's relationship to the Property, or the
13 disposition of the motion. Thus, the Court concludes that motions filed in Plaintiff's bankruptcy
14 case do not warrant imposition of contempt sanctions. *See Castell v. Metro. Life Ins. Co.*, 2012
15 WL 986625, at *4 (N.D. Cal. Mar. 22, 2012) (declining to impose contempt sanctions when “[the
16 movant] has not demonstrated that he suffered any harm”).

17 Viewing the record as a whole, the Court concludes that Plaintiff has willfully violated the
18 Vexatious Litigant Order by: (1) filing, pursuing, and appealing an adversary proceeding related to
19 the Property; and (2) filing, pursuing, and appealing a new complaint in federal court related to the
20 foreclosure of the Property. There is no indication that Plaintiff's actions were based on a
21 reasonable or good faith interpretation of the Vexatious Litigant Order. In fact, in the many filings
22 currently before the Court, Plaintiff does not dispute that Plaintiff failed to comply with the
23 Vexatious Litigant Order. *See* ECF Nos. 65, 66, 67, 74, 75, 77.

24 Plaintiff's only substantive response to the motion for contempt is that the Vexatious
25 Litigant Order is void. *See* ECF No. 66. However, Plaintiff never appealed the Vexatious Litigant
26 Order, and Plaintiff's current, untimely challenge to the validity of the Vexatious Litigant Order

1 does not excuse Plaintiff's failure to comply with the order. It is a "long-standing rule that a
2 contempt proceeding does not open to reconsideration the legal or factual basis of the order
3 alleged to have been disobeyed and thus become a retrial of the original controversy." *United*
4 *States v. Rylander*, 460 U.S. 752, 756 (1983) (quoting *Maggio v. Zeitz*, 333 U.S. 56, 69 (1948)).
5 In addition, for the reasons discussed above, Plaintiff is not entitled to relief from the Vexatious
6 Litigant Order under Federal Rule of Civil Procedure Rule 60. Thus, Plaintiff's disagreement with
7 the Vexatious Litigant Order does not excuse Plaintiff's repeated disregard of that order.

8 Given Plaintiff's willful violation of the Vexatious Litigant Order, and Plaintiff's lack of
9 legally viable bases for refusing to comply with the order, the Court finds Plaintiff in civil
10 contempt. The Court thus must decide on an appropriate sanction.

11 "Sanctions for civil contempt may be imposed to coerce obedience to a court order, or to
12 compensate the party pursuing the contempt action for injuries resulting from the contemptuous
13 behavior, or both." *Gen. Signal Corp.*, 787 F.2d at 1380. "Compensatory awards are limited to
14 actual losses sustained as a result of the contumacy." *Id.* (international quotation marks and
15 emphasis omitted). Countrywide and Recontrust argue that they have suffered actual losses
16 because they were forced to file the present motion and forced to defend against Plaintiff's
17 improper lawsuits. Countrywide and Recontrust seek the attorney's fees and costs that they
18 incurred defending against the suits filed in violation of the Vexatious Litigant Order.³ ECF No.
19 61. Such fees and costs "are an appropriate component of a civil contempt award." *In re Dyer*,
20 322 F.3d 1178, 1195 (9th Cir. 2003). Accordingly, the Court will award sanctions in the amount
21 of reasonable attorney's fees and costs that Countrywide and Recontrust expended to litigate the
22 instant motion, as well as to defend against Plaintiff's adversary proceeding and appeal, and to
23 defend against Plaintiff's new federal court case.

24 _____
25 ³ In the motion for contempt, Countrywide and Recontrust originally requested daily monetary
26 sanctions until Plaintiff dismissed the appeal of any action filed in violation of the Vexatious
27 Litigant Order. ECF No. 61, at 9. Because the majority of Plaintiff's appeals have been resolved,
28 Countrywide and Recontrust now seek only attorney's fees and costs. ECF No. 76.

1 To support the request for attorney's fees and costs, on August 5, 2016, Countrywide and
2 Recontrust submitted records of their attorney's time. ECF No. 76. However, Countrywide's and
3 Recontrust's attorney fails to explain his educational background or practice experience and thus
4 fails to justify the requested hourly rate of pay. *See Carson v. Billings Police Dep't*, 470 F.3d 889,
5 891 (9th Cir. 2006) (noting that the party seeking attorney's fees bears the burden of
6 demonstrating the reasonableness of the requested rates). Within ten days after the date of this
7 order, Countrywide and Recontrust shall submit a proposed order awarding reasonable attorney's
8 fees and costs. The proposed order shall be supported by an affidavit of counsel and any
9 necessary documents supporting a narrow and reasonable request for attorney's fees and costs.
10 Within seven days after the submission of Countrywide and Recontrust, Plaintiff shall file any
11 objection to the documentation of attorney's fees and costs. Thereafter, the matter will be
12 submitted without further oral argument.

13 **C. Plaintiff's Motion to Recuse**

14 The Court next addresses Plaintiff's motion to recuse. ECF No. 67. Motions to recuse a
15 judge from presiding in a given case fall under two statutory provisions: 28 U.S.C. § 144 and 28
16 U.S.C. § 455. *See United States v. Sibla*, 624 F.2d 864, 867 (9th Cir. 1980). Section 144, the
17 provision cited by Plaintiff here, provides for recusal where a party files a timely and sufficient
18 affidavit averring that the judge before whom the matter is pending has a personal bias or
19 prejudice either against the party or in favor of an adverse party, and setting forth the facts and
20 reasons for such belief. 28 U.S.C. § 144. Under section 144, "the substantive standard is whether
21 a reasonable person with knowledge of all the facts would conclude that the judge's impartiality
22 might reasonably be questioned." *Pesnell v. Arsenault*, 543 F.3d 1038, 1043 (9th Cir. 2008)
23 (alteration and internal quotation marks omitted), abrogated on other grounds by *Simmons v.*
24 *Himmelreich*, 136 S. Ct. 1843 (2016). "A party may file only one such affidavit in any case." 28
25 U.S.C. § 144.

26 Plaintiff has already filed one motion in the instant case seeking to recuse the undersigned

1 pursuant to § 144.⁴ ECF No. 32 (motion to recuse filed February 2, 2015).⁵ The Court denied
 2 Plaintiff's motion on March 10, 2015 because "Plaintiff provides no basis for a reasonable
 3 observer to find that the undersigned has displayed any bias or prejudice stemming from an
 4 extrajudicial source." ECF No. 58. Now, over a year after that denial and the dismissal of
 5 Plaintiff's claims, Plaintiff moves again to recuse the undersigned under § 144. ECF No. 67.
 6 Because Plaintiff may only move to recuse a judge under § 144 once per case, the instant motion
 7 to recuse is procedurally improper. *See* 28 U.S.C. § 144.

8 Further, Plaintiff fails to establish any basis to conclude that the Court's "impartiality
 9 might reasonably be questioned." *Pesnell*, 543 F.3d at 1043. Plaintiff alleges vaguely that the
 10 undersigned has engaged in forms of "misconduct . . . too many to list here" and asserts that the
 11 undersigned has "stolen monies and properties from Plaintiff" with "financial partner" U.S.
 12 District Judge Edward Davila. ECF No. 67, at 1, 3. Plaintiff's speculative assertions are
 13 insufficient to justify recusal. *See United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564,
 14 566 (9th Cir. 1995) (holding that "conclusory allegations" are "insufficient to support a claim of
 15 bias or prejudice such that recusal is required"). In addition, Plaintiff can not seek the
 16 undersigned's recusal based on Court rulings with which Plaintiff disagrees. *See United States v.*
 17 *Studley*, 783 F.2d 934, 939 (9th Cir. 1986) ("[A] judge's prior adverse ruling is not sufficient
 18 cause for recusal."). Finally, Plaintiff's attempts to sue and subpoena the undersigned do not
 19 provide a basis for recusal. *Id.* at 940 ("A judge is not disqualified by a litigant's suit or
 20 threatened suit against him."). Accordingly, Plaintiff's motion to recuse is DENIED.

21
 22
 23 ⁴ Plaintiff has made other allegations of judicial bias against the undersigned. The undersigned
 24 has presided over two additional foreclosure-related lawsuits filed by Plaintiff. In appealing the
 25 undersigned's order in one of those cases, Plaintiff also alleged that the undersigned was biased.
 26 The Ninth Circuit expressly "reject[ed] as without merit [Plaintiff's] contentions concerning
 27 alleged judicial bias." *Sepehry-Fard v. Bank of N.Y. Mellon, N.A.*, 588 Fed. App'x 685, 686 (9th
 28 Cir. 2014).

29 ⁵ Plaintiff filed an identical motion to recuse on February 4, 2015. ECF No. 37. In the Vexatious
 30 Litigant Order, the Court treated the identical motions to recuse as one motion. Vexatious Litigant
 31 Order at 6, 10–12.

D. Plaintiff's Motion to Confirm Jurisdiction

Plaintiff has filed an administrative motion to "confirm jurisdiction and to confirm jurisdiction over alleged Defendants." ECF No. 75. This motion is frivolous. The Court dismissed Plaintiff's claims on March 10, 2015, *see* ECF No. 58, and Plaintiff did not appeal. Because the case has already been dismissed, Plaintiff may not move to dismiss the case based on lack of jurisdiction. Further, *Plaintiff* invoked the jurisdiction of this Court by choosing to file the complaint in this Court. *See* ECF No. 1, ¶¶ 4–6, 8–11, 67 ("This court's jurisdiction is invoked as is found by reference at 28 USC § 1331. . . .). The Court exercised federal question jurisdiction because Plaintiff brought causes of action pursuant to federal statutes, and exercised supplemental jurisdiction over Plaintiff's related state law causes of action. *See* ECF No. 1 (Complaint), ¶ 11 (asserting claims under, for example, the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*). Accordingly, there was a clear basis for subject matter jurisdiction over the instant case. *See* 28 U.S.C. §§ 1331, 1367. In addition, Plaintiff lacks the power to decide whether this Court has jurisdiction. *See* ECF No. 75, at 2 (Plaintiff claiming that "it will be considered tacit admission this Court lacks proper jurisdiction" if the Court does not confirm jurisdiction within 15 days). Accordingly, the Court DENIES Plaintiff's motion to confirm jurisdiction.

E. Filing of Motions in This Case

This case was closed on March 10, 2015. No appeal was filed, and the time to appeal passed over one year ago. However, five motions were filed in May and June 2016. *See* ECF Nos. 61, 65, 66, 67, 75. The briefing and exhibits submitted for these five motions totaled over 1750 pages and, as discussed above, Plaintiff's four motions were meritless. These voluminous, frivolous filings strain the limited resources of the Court. Accordingly, it is hereby ORDERED that prior to filing any motion before the undersigned judge in this case, the moving party shall file an administrative motion seeking leave to do so. Any such motion for leave shall be no more than three (3) pages and shall summarize the proposed motion. No response to the administrative

1 motion shall be filed. If the Court grants leave to file the proposed motion, the moving party shall
2 do so in compliance with the Court's Civil Local Rules. If leave is denied, then the proposed
3 motion can not be filed.

4 **IV. CONCLUSION**

5 For the foregoing reasons, the Court hereby rules as follows:

- 6
- 7 • The Court DENIES Plaintiff's motion for relief from judgment under Federal Rule
of Civil Procedure 60;
 - 8 • The Court DENIES Plaintiff's motion to strike the motion for contempt;
 - 9 • The Court GRANTS Countrywide's and Recontrust's motion for contempt;
 - 10 • The Court DENIES Plaintiff's motion to recuse the undersigned;
 - 11 • The Court DENIES Plaintiff's motion to confirm jurisdiction; and
 - 12 • The Court ORDERS that prior to filing any motion before the undersigned judge in
this case, the moving party shall file an administrative motion seeking leave to do
so.
- 13

14

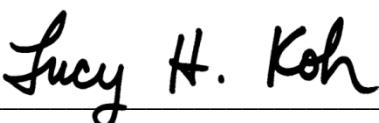
15 Within ten days after the date of this order, Countrywide and Recontrust shall submit a
16 proposed order awarding reasonable attorney's fees and costs as described in Section III.B.2
17 above. Within seven days after the submission of Countrywide and Recontrust, Plaintiff shall file
18 any objection to the documentation of attorney's fees and costs. Thereafter, the matter will be
19 submitted without further oral argument.

20 **IT IS SO ORDERED.**

21

22 Dated: August 23, 2016

23

24 
LUCY H. KOH
United States District Judge